

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10581 of 1995

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 TO 5 - NO

KHALIL H MEER

Versus

STATE OF GUJARAT

Appearance:

MR AKSHAY H MEHTA for Petitioner

MR GHARANIA, AGP for Respondent No. 1, 2, 3, 4

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 16/07/97

ORAL JUDGEMENT

The petitioner herein seeks compassionate employment under the respondents. The petitioner's father one Hamidbhai Meer was serving as a Jr. Assistant Mechanic under the respondents and while serving as such, he died of a cardiac arrest on 9.11.1984. Said Hamidbhai left behind him his widow and two minor children viz. a daughter and a son i.e. the present petitioner. After

the death of said Hamidbhai, on 15.3.1985, the Executive Engineer sought information of the family members of the said Hamidbhai from his brother- Dr. Rasheedbhai. The information was furnished. However, since both the children were minor, neither the widow nor any of the children could claim compassionate employment. The minor daughter attained majority in the year 1988 and the petitioner attained majority in the year 1991. Even prior to the petitioner's attaining majority, in the year 1990 an application was made by Dr. Rasheed Meer, brother of the deceased, to offer employment to the petitioner on compassionate grounds. After considering the petitioner's application for compassionate employment, the same was rejected on 2nd April 1993. The said order is annexed to the petition at page 58. The department has informed the concerned Superintending Engineer that since the application was not made by the petitioner within five years from the death of the Government Servant his application could not be entertained. Feeling aggrieved, the petitioner preferred writ petition before this Court being Spl.Civil Application No. 10879/93. The said application was allowed by this Court and this Court directed the respondents to reconsider the application keeping in view the observations made by the Court. Accordingly, the petitioner's claim for compassionate employment was reconsidered and under the order dated 14th October 1994, the petitioner has been informed that since the minor daughter of late Hamidbhai had attained majority in the year 1988 i.e. within five years from the death of her father Hamidbhai and since she had not applied for compassionate employment, the petitioner's application made five years after the death of late Hamidbhai, could not be entertained.

2... Feeling aggrieved by the above-referred order dated 14th October 1994, the petitioner has preferred this petition. Ld. Advocate Mr. Mehta appearing for the petitioner has submitted that the petitioner's sister had not applied for the compassionate employment at all and merely because she did not wish to take employment, the petitioner cannot be denied the employment to which he is otherwise entitled. Ld. Asstt. Govt. Pleader Mr. Gharania has supported the impugned order.

3... In my view, the reasons stated for refusing the petitioner's application for compassionate employment are not justifiable. It is undisputed that the petitioner was a member of the family of late Hamidbhai and was

dependent upon the said Hamidbhai. Thus, he has a right to employment on compassionate ground. Further, he had made an application for compassionate employment before he attained the majority. His application for compassionate employment made soon after his attaining majority, therefore, cannot be said to be delayed. It is for the family members of the deceased employee to decide as to which member of the family should apply for compassionate employment. If the daughter does not wish to take employment at all, the son who is younger than such daughter cannot be refused employment merely because the older daughter did not apply for the same. Further, paragraph 9 of the Govt. Circular dated 1st March 1984, containing certain terms and conditions, on satisfying which one can be offered compassionate employment, provides that compassionate employment will be permissible within a period of five years after the occurrence of the death of the government servant. However, in exceptional cases, e.g. in case of a government servant at the time of his death leaving behind illiterate widow and minor children none of who can be offered employment; in such a case the period of five years can be relaxed with the General Administrative Department's prior concurrence. Thus, adequate provision is made for a minor child to claim compassionate employment after he attains majority even though that event may occur more than five years after the death of a government servant. In view of the said provision, the petitioner's case for compassionate employment should have been considered on its own merits. If the petitioner were otherwise eligible for appointment to a government post, he should have been offered employment on compassionate ground.

4... In view of above discussion, this petition is allowed. The impugned order dated 14th October 1994 at Annex.N to the petition is hereby quashed and set aside. The respondents are directed to consider the petitioner's application for compassionate employment on its own merits and if the petitioner is otherwise found to be eligible for appointment to a government post, the same may be offered to him. The petitioner's claim shall not be rejected either on the ground of application having been made five years after the death of late Hamidbhai or on the ground that the petitioner's sister i.e. daughter of late Hamidbhai did not apply for compassionate employment on her attaining majority. This exercise shall be completed within a period of 3 weeks from the date of receipt of the copy of this order. Petition is allowed to the aforesaid extent. Rule is made absolute.

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